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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 KENNETH WAYNE LEAMING, et al.,

14 Defendant.

CASE NO. CR12-5039 RBL

ORDER ON REVIEW OF MOTION
TO RECUSE

15
16 Before this Court is Defendant Leaming's motion for recusal (Dkt. No. 199) and Judge
17 Leighton's order declining to recuse himself. Dkt. No. 202. The motion has been transferred to
18 this Court for review in accordance with Local Rule GR 8(c).

19 Upon consideration of the motion and all relevant documents in this matter, the Court
20 affirms Judge Leighton and DENIES the motion to recuse.

21 **DISCUSSION**

22 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in
23 any proceeding in which his impartiality "might reasonably be questioned." A federal judge
24 also shall disqualify himself in circumstances where he has a personal bias or prejudice

1 concerning a party or personal knowledge of disputed evidentiary facts concerning the
 2 proceeding. 28 U.S.C. § 455(b)(1).

3 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate
 4 if “a reasonable person with knowledge of all the facts would conclude that the judge’s
 5 impartiality might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626
 6 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of
 7 bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th
 8 Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United*
 9 *States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis
 10 for recusal:

11 [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality
 12 motion. . . . [O]pinions formed by the judge on the basis of facts introduced or
 13 events occurring in the course of the current proceedings, or of prior proceedings,
 14 do not constitute a basis for a bias or partiality motion unless they display a deep
 15 seated favoritism or antagonism that would make fair judgment impossible. Thus,
 16 judicial remarks during the course of a trial that are critical or disapproving of, or
 17 even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias
 18 or partiality challenge.

16 *Id.* at 555.

17 While the basis for Defendant’s motion is not exceedingly clear, it is apparent that he
 18 believes that Judge Leighton’s rulings (or failures to rule) on certain of Defendant’s motion in
 19 the above-entitled matter are in error: “[Judge Leighton] continues to interfere with the effective
 20 and expeditious administration of the business of the courts by willfully and persistently failing
 21 to perform [his] DUTIES, inclusive of the DUTY to hear and make any finding of FACT and
 22 Conclusions of LAW as to the several elements of jurisdiction as clearly established and set
 23 forth....” Motion, pp. 5-6 (*citations omitted*).

1 A judge's conduct in the context of pending judicial proceedings does not constitute the
2 requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted solely by information that the
3 judge received in the context of the performance of his duties. Bias is almost never established
4 simply because the judge issued an adverse ruling.

5 In order to overcome this presumption, Plaintiff would have to show that facts outside the
6 record influenced decisions or that the presiding judicial officer's rulings were so irrational that
7 they must be the result of prejudice. Plaintiff does not allege any facts outside the record that
8 improperly influenced the decisions in this matter. Plaintiff has identified no error of law, and a
9 review of Judge Leighton's rulings in this matter reveals no orders that were so outlandish or
irrational as to give rise to an inference of bias.

10 Plaintiff may disagree with Judge Leighton's rulings but that is a basis for appeal, not
11 disqualification. As Plaintiff has cited no extrajudicial source of bias, the Court finds that Judge
12 Leighton's impartiality cannot reasonably be questioned. There being no evidence of bias or
13 prejudice, Plaintiff's request for recusal is DENIED.

14 CONCLUSION

15 There is no reasonable basis for a voluntary recusal in this instance.

16 Accordingly it is hereby **ORDERED** that the undersigned **DENIES** Defendant's motion
17 for Judge Leighton to recuse himself in this case.

18 The clerk is ordered to provide copies of this order to Defendant and to all counsel.

19 Dated this 3rd day of April, 2013.

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22 Marsha J. Pechman
23 United States Chief District Judge
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